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HOUSE BILL 883

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Thomas C. Taylor

AN ACT

RELATING TO PROCUREMENT; ENACTING THE CLEAN GOVERNMENT
CONTRACTING ACT; IMPOSING CERTAIN CONDITIONS FOR CERTAIN SOLE-
SOURCE CONTRACTS; ESTABLISHING PENALTIES FOR VIOLATIONS OF
CONDITIONS; PROVIDING EXCEPTIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Clean Government Contracting Act".

Section 2. PURPOSE.--The purpose of the Clean Government
Contracting Act is to prevent influence peddling and the
appearance of public corruption between government officials
and sole-source government contractors, which undermine public
confidence in New Mexico government, and to restore the
public's confidence in elected officials.

Section 3. DEFINITIONS.--As used in the Clean Government

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1 Contracting Act:

2 A. "government" means the executive, legislative
3 and judicial branches of state and local governments and all
4 advisory boards, commissions, committees, agencies or entities
5 created by the constitution or any branch of government that
6 receives any public funding, including counties, municipalities
7 and other political subdivisions, special taxing districts,
8 school districts and institutions of higher education;

9 B. "government contract" means a contract awarded
10 by a government for the procurement of goods and services,
11 including a collective bargaining agreement with a labor
12 organization representing government employees;

13 C. "major sole-source government contract
14 arrangement" means a government contract, or a series of
15 government contracts held at one time, in which the following
16 characteristics exist:

17 (1) the total actual or accrued payment
18 obligations of the non-governmental party or its principal
19 stakeholders to the arrangement exceed a total cumulative
20 annual monetary value of fifty thousand dollars (\$50,000); and

21 (2) the government contract is awarded without a
22 fair and open public competitive bidding process that includes, at
23 a minimum, the bona fide public solicitation of no less than three
24 competitive bids or, in the case of collective bargaining
25 agreements with a labor organization representing employees, the

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1 contract for services confers upon a labor organization an
2 exclusive representative status to bind all employees to accept
3 the terms and conditions of the agreement;

4 D. "non-governmental party" means the person to whom a
5 government contract is awarded and, in the case of a collective
6 bargaining agreement with a labor organization representing
7 government employees, a labor organization if the contract for
8 services confers upon the labor organization an exclusive
9 representative status to bind all employees to accept the terms
10 and conditions of the agreement;

11 E. "principal stakeholder" means a person with the
12 following relationship to a non-governmental party to a government
13 contract:

14 (1) owns at least a five percent interest, as a
15 stockholder, member or otherwise;

16 (2) is a trustee or a member of the board of
17 directors, except uncompensated members of the board of directors
18 of a nonprofit charitable organization that qualifies for
19 tax-exempt status pursuant to Section 501(c)(3) of the federal
20 Internal Revenue Code of 1986, as amended;

21 (3) is a president, treasurer, executive vice
22 president, chief executive officer or similar officer that
23 possesses comparable powers and duties;

24 (4) is an officer or agent who has primary
25 managerial or discretionary responsibilities with respect to the

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1 government contract;

2 (5) is a subcontractor, or its principal
3 stakeholder, with at least a five percent stake in the government
4 contract;

5 (6) is the spouse or a dependent child who is
6 eighteen years of age or older of a person described in this
7 subsection; or

8 (7) is a political committee established or
9 controlled by a person described in this subsection; and

10 F. "solicit" means to make an express or clearly
11 implied request or inducement that a contribution and active
12 participation be made in fundraising activities for a candidate
13 committee, exploratory committee, political committee or party
14 committee, including forwarding tickets to potential contributors,
15 receiving contributions for transmission to any of those
16 committees, serving as chairperson, treasurer or deputy treasurer
17 of any of those committees or establishing a political committee
18 for the sole purpose of soliciting or receiving contributions for
19 a committee. "Solicit" does not include informing a person of a
20 position taken by a public official or candidate, notifying the
21 person of activities, campaign events or contact information for a
22 public official or candidate without suggesting that they should
23 attend or contribute or serving as a member in a party committee
24 or as an officer of that committee so long as the person is not
25 directly engaged in any fundraising activities.

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1 Section 4. CONDITIONS FOR MAJOR SOLE-SOURCE GOVERNMENT
2 CONTRACT ARRANGEMENTS.--

3 A. A non-governmental party to a major sole-source
4 government contract arrangement and its principal stakeholders
5 shall contractually agree, for the duration of the contract term
6 and for two years thereafter, not to make or actively solicit
7 contributions, directly or indirectly, to or for the benefit of a
8 candidate or campaign committee of a candidate for nomination or
9 election to any elective office in the state.

10 B. A prospective non-governmental party to a major
11 sole-source government contract arrangement and its principal
12 stakeholders shall contractually agree, during active contract
13 negotiations, not to make or actively solicit contributions,
14 directly or indirectly, to or for the benefit of the campaign
15 committee of a candidate for nomination or election to any
16 elective office in the state.

17 C. A prospective non-governmental party to a major
18 sole-source government contract arrangement and its principal
19 stakeholders shall contractually agree not to make or actively
20 solicit contributions, and shall not have made, pledged or
21 actively solicited any contributions or expenditures, directly or
22 indirectly, to or for the benefit of any ballot measure, political
23 committee or other person for the purpose of influencing voter
24 approval of a bond issue or other measure that would authorize,
25 reauthorize or fund any project that involves that specific

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1 government contract, a related contract or its renewal.

2 D. A major sole-source government contract arrangement
3 shall have the provisions required in this section incorporated
4 into the government contract.

5 E. A non-governmental party to a major sole-source
6 government contract arrangement, its principal stakeholders and
7 all government officials responsible for negotiation, management,
8 payment, inspection or certification of the arrangement or
9 pursuant to provisions of the arrangement shall be responsible to
10 submit, on a continuing basis, current and accurate information
11 about the arrangement to the department of finance and
12 administration, but shall not be required by this section to make
13 any public disclosure that would violate federal law, trade
14 secrets or intellectual property rights. The department of
15 finance and administration shall:

16 (1) promulgate a rule for the reporting of the
17 information required in this subsection that includes the:

- 18 (a) date of the government contract award;
19 (b) beginning and end dates of the
20 government contract;
21 (c) estimated amount and rate of payment;
22 (d) reason the government contract was
23 awarded as a sole-source contract;
24 (e) nature of the goods or services to be
25 procured; and

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1 (f) identity of the non-governmental party
2 and each of its principal stakeholders and the identity of the
3 government officials responsible for negotiation, management,
4 payment, inspection or certification of the government contract;
5 and

6 (2) promptly publish and maintain the information
7 required in this subsection in a database available on the
8 department of finance and administration's internet web site. The
9 database shall be indexed and searchable so that names of
10 non-governmental parties and their principal stakeholders may be
11 ascertained and compared against campaign contribution and
12 expenditure disclosures published by the government.

13 Section 5. ANTI-CIRCUMVENTION.--In order to prevent attempts
14 to circumvent the Clean Government Contracting Act, it shall be a
15 contract violation for a non-governmental party to a major
16 sole-source government contract arrangement or its principal
17 stakeholders to knowingly participate in a scheme to require,
18 coerce, engage, use or entice a family member, individual,
19 employee, subcontractor, agent, political committee or other
20 person or entity to act as a conduit for the indirect making or
21 solicitation of campaign funds to or from a political party,
22 political organization, political action committee, separate
23 segregated fund or other political committee authorized by law to
24 make contributions or expenditures to or for the benefit of a
25 candidate or the campaign committee of a candidate for nomination

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1 or election to any elective office in the state.

2 Section 6. VIOLATIONS.--

3 A. A non-governmental party or its principal
4 stakeholders to a major sole-source government contract
5 arrangement, who intentionally violate a condition pursuant to
6 Section 4 of the Clean Government Contracting Act, directly or by
7 circumvention, shall be ineligible to be a party or principal
8 stakeholder of a party to a major sole-source government contract
9 arrangement or a public employee with the contracting government
10 for three years and may be subject to contract liability to pay
11 restitution to the general treasury of the contracting government
12 to compensate the public for costs and expenses associated with
13 the breach, including costs and losses involved in securing a new
14 government contract, if necessary.

15 B. A public official or candidate for an elective
16 office in the state who intentionally participates in a scheme to
17 violate a condition pursuant to Section 4 of the Clean Government
18 Contracting Act, directly or by circumvention, or a person who
19 intentionally accepts contributions on behalf of a candidate
20 committee, political committee, political party or other entity in
21 violation of that condition, may be liable to pay restitution to
22 the general treasury of the contracting government to compensate
23 that government for all costs and expenses associated with the
24 violation, including costs and losses involved in securing a new
25 government contract, if that becomes necessary. Intentional

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1 participation shall be grounds for removal from office and
2 disqualification to hold any office in government in the state and
3 shall constitute misconduct and malfeasance in office.

4 C. If a person responsible for the bookkeeping of a
5 person that seeks or has a major sole-source government contract
6 arrangement with a government, or if a person acting on behalf of
7 a government obtains knowledge of a contribution made or accepted
8 in violation of the Clean Government Contracting Act, and that
9 person intentionally fails to notify the secretary of state or the
10 attorney general about the violation in writing within ten
11 business days of learning of such contribution, the person may be
12 liable to pay restitution to the general treasury of the
13 contracting government to compensate that government for all costs
14 and expenses associated with the violation, including costs and
15 losses involved in securing a new government contract, if that
16 becomes necessary.

17 D. The secretary of state or the attorney general may
18 enforce the provisions of the Clean Government Contracting Act. A
19 registered voter of the state may enforce the provisions of the
20 Clean Government Contracting Act by filing a complaint for
21 injunctive or declaratory relief or for civil damages and remedies
22 in the district court.

23 Section 7. EXEMPT CONTRACTS, PERSONS AND ACTIVITIES.--The
24 Clean Government Contracting Act shall not:

25 A. prevent public or private employees who are subject

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1 to collective bargaining agreements, or their families, from
2 freely making and soliciting political contributions on their own
3 account, with their own money, to any candidate of committee they
4 choose, unless they are themselves a direct party to a major sole-
5 source government contract arrangement, a principal stakeholder of
6 that party or a conduit knowingly acting on behalf of another in
7 circumvention of an agreement pursuant to the Clean Government
8 Contracting Act;

9 B. prevent a person from freely engaging in political
10 speech or activity, including volunteering for a candidate's
11 political campaign in a non-fundraising capacity, placing a lawn
12 sign at the person's property, making get out the vote calls,
13 expressing support for a candidate or the candidate's views,
14 advising someone whether a candidate is likely to be elected,
15 communicating the person's evaluations of an official or candidate
16 to the person's clients or to another person, making independent
17 expenditures on behalf of a candidate, providing advice to an
18 official or candidate for public office, running for public
19 office, being the spouse or dependent child of someone running for
20 office, contribute to a political committee that is not
21 established or controlled by a candidate, attending campaign
22 events for candidates that do not involve fundraising or hosting
23 an event for a candidate that is not a fundraising event;

24 C. apply to a contract to provide licensed
25 professional legal services or medical services or medicines to

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1 members of the public, including indigents, persons with
2 disabilities, elderly persons or other persons as provided by law,
3 at standardized rates or amounts fixed by the government, if that
4 contract is regularly offered, without preference, to a broad
5 range of individual qualified professional providers;

6 D. apply to the combined incidental purchases of goods
7 or services on the open retail market;

8 E. apply to inadvertent technical violations by a
9 person where the exercise of due diligence could not reasonably
10 have been expected to have made the person aware of the violation,
11 and where the violation was cured within three days of its
12 discovery; or

13 F. apply to a government agreement or contract with
14 the state, any state agency or any quasi-public agency that is
15 exclusively federally funded, an education loan or a loan to an
16 individual for other than commercial purposes.

17 Section 8. SEVERABILITY.--If any part or application of the
18 Clean Government Contracting Act is held invalid, the remainder or
19 its application to other situations or persons shall not be
20 affected.